

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7225 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHUPENDRABHAI GOVINDBHAI ALIAS JESINGBHAI PATEL

Versus

MAIKALBHAI DANABHAI CHRISTI

Appearance:

MR AJ PATEL for Petitioners
MR TH SOMPURA for Respondent No. 1
RULE SERVED BY DS for Respondents No. 2-3
DS AFF.NOT FILED (R) for Respondent No. 4

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 26/12/2001

ORAL JUDGEMENT

1. This petition under Article 226 of the
Constitution of India arises out of the proceedings under

Section 32PP of the Bombay Tenancy and Agricultural Lands Act, 1948.

2. The father of the respondent no.1 was the tenant of the land in question. However, in proceedings under Section 32P of the Act, it was held on 1st August, 1963 that the tenant had expressed his unwillingness to purchase the land and, hence, the purchase was declared ineffective. It was also observed that notice was issued to the landlord to ascertain whether he wanted the land for personal cultivation and since the landlord expressed his desire to keep the land for personal cultivation and stated that he had already obtained possession, the name of the tenant was ordered to be deleted. It appears that on 20th December, 1964, mutation entry was made in the revenue record and the name of the tenant was deleted. The said entry was certified on 21st July, 1965. However, it appears that subsequently, proceedings were initiated under Section 32PP and 32PPP of the Act. The said proceedings were dropped by the Mamlatdar and A.L.T. on 25th March, 1991 on the ground that no suo motu proceedings could be initiated under the said Section but observing that there was no application for purchasing the land under the said Section, the land was ordered to be vested in the Government. It was directed that if the possession was with the tenant, it should remain with him and if the possession was with any other person, then he should be evicted.

3. Being aggrieved by the said order, the petitioners filed two appeals, one before the Deputy Collector and the other before the Deputy Secretary, Revenue Department. The Deputy Collector, by his order dated 8th August, 1994, set aside the order of the Mamlatdar. The petitioners, therefore, filed a purshis before the Deputy Secretary stating that since the impugned order of the Mamlatdar has been set aside by the Deputy Collector, they were withdrawing the appeal which was pending before the Government. However, the Deputy Secretary refused leave to withdraw the appeal holding that the order of the Mamlatdar was under Section 32P of the Act and hence, the appellate authority was the Government and not the Deputy Collector. He also confirmed the order of the Mamlatdar.

4. The petitioners have, therefore, filed this petition under Article 226 of the Constitution challenging the said order of the Deputy Secretary.

5. It was contended on behalf of the petitioners that the impugned order of the Mamlatdar was under

Section 32PP and hence under Section 74, the appellate authority would be the Collector and not the Government. It is further contended on behalf of the petitioners that once the petitioners filed a purshis withdrawing the appeal, the Deputy Secretary has no jurisdiction to proceed further with the appeal. However, it is not necessary to consider the said contention in view of the other contention raised on behalf of the petitioners which has substance. It is submitted that the Deputy Secretary committed an error in not appreciating that the land which was disposed of in accordance with the provisions of Section 32P of the Act could not have been the subject matter of the proceedings under Section 32PP of the Act again. It appears that when the Mamlatdar passed the impugned order, he did so in ignorance of the previous proceedings under Section 32P in which it was already held that the purchase had become ineffective and the name of the tenant had been deleted. The Mamlatdar rightly held that suo motu proceedings could not have been initiated under Section 32PP of the Act. He, therefore, committed an error in passing further orders after coming to the said conclusion and dropping the proceedings. The petition is, therefore, allowed. The impugned order of the Deputy Secretary is set aside and the order of the Deputy Collector is restored. Rule made absolute with no order as to costs.

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